

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION,
OPIATE LITIGATION

MDL NO. 2804

Case No. 17-MD-2804

Judge Dan Aaron Polster

THIS DOCUMENT RELATES TO:

Rees v. McKesson Corporation, et al.
MDL Case #1:18-OP-45252

Ellis v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45464

Simonson v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45479

Wood v. Purdue Pharma L.P., et al.
MDL Case #1:18-OP-45264

DeMaro v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45465

Delancey v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45480

Salmons v. Purdue Pharma L.P., et al.
MDL Case #1:18-OP-45268;

Cruz v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45466

Stewart v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45481

Ambrosio v. Purdue Pharma L.P., et al.
MDL Case #1:18-OP-45375

Paul v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45467

Shenmake v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45482

Flanagan v. Purdue Pharma L.P., et al.
MDL Case #1:18-OP-45405

Lechuga v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45468

Weatherwax v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45483

Whitley v. Purdue Pharma L.P., et al.
MDL Case #1:18-OP-45598

Brumbarger v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45469

Martinez v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45484

Roach v. McKesson Corporation, et al.
MDL Case No. #1:18-OP-45662

Means v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45470

Warren v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45486

Hunt v. Purdue Pharma L.P., et al.
MDL Case No. #1:18-OP-45681

Peterson v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45472

Carlson v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45487

Hanlon v. Purdue Pharma L.P., et al.
MDL Case No. #1:19-op-45052

Hampel v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45473

Flach v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45488

Doyle v. Purdue Pharma L.P., et al.
MDL Case No. #1:18-op-46327

Whittaker v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45475

Ivie v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45489

Moore v. Purdue Pharma L.P., et al.
MDL Case No. #1:18-op-46305

Tuttle v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45476

Cherry v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45490

Artz v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45459

Hamavi v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45477

Ortiz v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45492

Rodriguez v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45463

Gauthier v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45478

Meinecke v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45493

<i>Brant v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45494	<i>Kirk v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45509	<i>Kommer v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45522
<i>Williams, v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45485	<i>Martin v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45510	<i>Lyle v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45524
<i>Alexander v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45502	<i>Gibson v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45515	<i>Massey v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45525
<i>Berzinski v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45503	<i>Goldman v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45516	<i>McAnany v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45526
<i>Johnson v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45504	<i>Goss v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45518	<i>Shockley v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45527
<i>Hutchins v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45505	<i>Herring v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45519	<i>Taylor v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45528
<i>Muffley v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45507	<i>Howell v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45520	<i>Taylor v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45529
<i>Martin v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45508	<i>Johnson v. Purdue, Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45521	<i>Tindall v. Purdue Pharma, L.P., et al.</i> MDL Case No. #1:19-op-45530

**NAS BABY PLAINTIFFS' MOTION TO MODIFY
PROTECTIVE ORDER RE: DEA'S ARCOS/DADS DATABASE**

MAY IT PLEASE THE COURT:

Plaintiffs, individually and on behalf of all putative class members in the above captioned matters, respectfully request that the Court enter an Order amending the Protective Order re: DEA ARCOS/DADS Database to allow disclosure of the ARCOS/DADS data to counsel for NAS babies who are plaintiffs in the MDL (hereinafter “ “NAS Baby Plaintiffs” or “NAS babies”).

On March 6, 2018 this Court entered the initial Protective Order Re: DEA's ARCOS/DADS Database (Rec. Doc. #167) and on May 8, 2018 this Court entered the Amendment to Protective Order, (Rec. Doc. #400). On March 15, 2019, Plaintiffs filed a Motion to Modify the Court's ARCOS Protective Order. Rec. Doc. #1447. On March 19, 2019, Hospitals filed a brief in support of Plaintiffs' proposed modification. Rec. Doc. #1455. On April 12, 2019, after further briefing by the parties and

the DEA, this Court issued an updated ARCOS Protective Order. Rec. Doc. #1545. This Protective Order, inter alia, added Hospital Plaintiffs in the MDL 2804 to the list of authorized individuals to whom the ARCOS data could be disclosed. The NAS babies were not mentioned. Counsel for the NAS babies seek to remedy that omission.

NAS Baby Plaintiffs in the MDL seek this ARCOS data for the same purposes as the Hospital Plaintiffs—to mediate, settle or otherwise prosecute their claims, purposes explicitly allowed for by the Protective Order. Protective Order Re: DEA’s ARCOS/DADS Database, Rec. Doc. #1545 at ¶ 5. The NAS babies should not be treated differently than the other parties to this litigation. “There is a legitimate need for Plaintiffs to obtain this [ARCOS] data.” Order Re: ARCOS/DADS Database, Rec. Doc. #112 at 2. Indeed, this data cannot be obtained from any other source and is necessary for the NAS Baby Plaintiffs to litigate their claims, just as it is for the Hospital Plaintiffs.

Counsel for the NAS Babies have been seeking access to the ARCOS data from the PEC for some time but have not yet been granted access or a clear response to Counsels’ requests, despite repeated inquiries. On January 31, 2019 Counsel wrote Paul Farrell, the PEC’s ARCOS point person, asking for ARCOS access and for clarification on the PEC’s position regarding the applicability to non-governmental entities of the Order requiring that complaints be amended by March 16 to reflect proper parties according to the ARCOS data (Rec. Doc. #739). *Exhibit 1*. No response was received. Counsel followed up with Burton LeBlanc on February 7, but again, no response. *Exhibit 2*. On February 28, Counsel reached out to the PEC’s legal investigator designated to process ARCOS data requests, Josh Gay. Mr. Gay did respond and continued to correspond extensively with Counsel by email for the next two weeks but was unable secure an answer from PEC leadership or the Special Masters about Plaintiffs’ request. Ultimately, Plaintiffs amended their complaints to comply with the March 16 complaint amendment deadline but were forced to do so without the aid of the needed ARCOS data. Counsel eventually reached out to Special Master Cohen in correspondence on May 9

and 15, nonetheless the issue remains unresolved. *Exhibits 3 and 4*. During a May 21 call with Joe Rice and Special Masters Cohen and McGovern, PEC Member Rice indicated that the ARCOS data the NAS Baby Plaintiffs needed was public and counsel should reach out to Paul Farrell, Jr. to obtain it. Mr. Farrell confirmed that the public ARCOS data was useless and that he had what the NAS Baby Plaintiffs needed. Counsel wrote to the Special Masters and Mr. Rice about this and received no response. Baby Plaintiffs have been prejudiced by the continued refusal to provide the requested information. In addition to the delaying the Baby Plaintiffs from pursuing their claims, this past week, on June 12, 2019, the liaison counsel for the PEC emailed Plaintiffs, chastising them for naming certain distributor defendants in inapplicable jurisdictions per ARCOS data that Baby Plaintiffs have never seen. *Exhibit 5*. The correspondence went so far as to raise the prospect of the dismissal of claims. This unfair, prejudicial situation remains unresolved.

The NAS Baby Plaintiffs note that the DOJ/DEA “does not object to granting access of the ARCOS or SORS data to Plaintiff Hospitals who are parties to the MDL and who have signed the protective order for use in this litigation only.” Rec. Doc. #1522. The undersigned have already agreed to be bound the protective order and seek only to use the ARCOS data for the purposes of this litigation. The DEA has conceded that it is in the “public interest to provide a limited authorization” of “the names and market share of all manufacturers and distributors in each state who comprise 95% or more of the market share for certain opioids provided that the release of this information is covered by an acceptable protective order.” ((Letter from David A. Sierleja to Paul Farrell (“Sierleja Letter”), Mar. 5, 2018, Rec. Doc. #165-1 at 1)). “Indeed . . . providing the information is consistent with the DOJ’s own efforts to combat the devastating opioid crisis that is ravaging families and communities across America.” *Id.* at 2. Counsel for the NAS Plaintiffs seek to address the epidemic ravaging their own communities, where infants born addicted to opioids are born every 15 minutes according to the CDC.

To their prejudice, the NAS Baby Plaintiffs are being treated differently than the Hospitals and Governments concerning the disclosing of ARCOS/DADS data. The NAS Babies are being denied access to the data although the Hospitals and Governments are being provided the data. This discriminatory treatment is without good cause and reflects a broader pattern of unfair treatment of the NAS Baby Plaintiffs.

As detailed above, the persistent efforts of Counsel for the NAS Babies have yet to result in a clear response to counsels' requests by the PEC, much less access to the needed ARCOS data. The omission of the NAS Babies from the Protective Order creates an ambiguous situation, especially where all Plaintiffs in the MDL are required to amend their complaints utilizing ARCOS information to add or dismiss defendants. Rec. Doc. #739.

We respectfully ask for an Order explicitly allowing the NAS Baby Plaintiffs access to the ARCOS/DADS data.

For the foregoing reasons, NAS Baby Plaintiffs' pray that their motion is granted.

Respectfully submitted,

/s/ Celeste Brustowicz

COOPER LAW FIRM, LLC

Celeste Brustowicz (LA 16835)

Barry J. Cooper, Jr.

Stephen H. Wussow (LA 35391)

Victor Cobb

1525 Religious Street

New Orleans, LA 70130

Telephone: 504-399-0009

Cbrustowicz@sch-llc.com

/s/ Scott R. Bickford

MARTZELL, BICKFORD & CENTOLA

Scott R. Bickford (LA 1165)

Spencer R. Doody (LA 27795)

338 Lafayette Street

New Orleans, LA 70130

Telephone: 504-581-9065

Facsimile: 504-581-7635

sbickford@mbfirm.com
srd@mbfirm.com
usdcndoh@mbfirm.com

/s/ Kevin W. Thompson
THOMPSON BARNEY LAW FIRM
Kevin W. Thompson
David R. Barney, Jr.
2030 Kanawha Boulevard, East
Charleston, WV 25311
Telephone: 304-343-4401
Facsimile: 304-343-4405
Kwthompsonwv@gmail.com

/s/ James F. Clayborne
CLAYBORNE, SABO & WAGNER, LLP
Sen. James F. Clayborne (IL 45627)
525 West Main Street, Suite 105
Belleville, IL 62220
Telephone: 618-239-0187
Facsimile: 618-416-7556
jclayborne@cswlawllp.com

/s/ Kent Harrison Robbins
**THE LAW OFFICES OF KENT HARRISON
ROBBINS, P.A.**
Kent Harrison Robbins (FL 275484)
242 Northeast 27th Street
Miami, FL 33137
Telephone: 305-532-0500
Facsimile: 305-531-0150
Primary: Khr@khrlawoffices.com
Secondary: ereyes@khrlawoffices.com
Tertiary: assistant@khrlawoffices.com

/s/ Donald Creadore
THE CREADORE LAW FIRM, P.C.
Donald Creadore (NY 09202)
450 Seventh Avenue - 1408
New York, NY 10123
Telephone: 212-355-7200
Facsimile: 212-583-0412
Primary: donald@creadorelawfirm.com
Secondary: donald@aol.com

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2019, a copy of the above and foregoing has been electronically filed with the Clerk of Court using the CM/ECF system, which provides an electronic service notification to all counsel of record registered as CM/ECF users.

/s/ Celeste Brustonicz